

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 3.0  
Eastern Division**

Juan Johnson

Plaintiff,

v.

Case No.: 1:05-cv-01042

Honorable John F. Grady

Reynaldo Guevara, et al.

Defendant.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Wednesday, April 11, 2007:

MINUTE entry before Judge John F. Grady :Status hearing held on 4/11/2007. City of Chicago to produce Monell evidence tendency to show defendant Guevara on other occasions suppressed evidence favorable to arrested person or procured false testimony implicating other person in criminal offenses.Mailed notice(jlj, )

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

JUAN JOHNSON, ) Docket No. 05 C 1042  
)  
Plaintiff, )  
)  
vs. ) Chicago, Illinois  
) April 11, 2007  
REYNALDO GUEVARA, CITY OF CHICAGO, ) 10:30 o'clock a.m.  
)  
Defendants. )

TRANSCRIPT OF PROCEEDINGS - STATUS  
BEFORE THE HON. JOHN F. GRADY

APPEARANCES:

For the Plaintiff: GARDINER KOCH & WEISBERG  
BY: MR. THOMAS G. GARDINER  
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Chicago, Illinois 60604

For the Defendants: JAMES G. SOTOS & ASSOCIATES, LTD.  
BY: MS. ELIZABETH A. EKL  
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Chicago, Illinois 60604  
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1 THE CLERK: 05 C 1042, Johnson versus Guevara.

2 MR. GARDINER: Good morning, your Honor. Tom  
3 Gardiner and Dan Stohr, on behalf of the plaintiff.

4 THE COURT: Good morning.

5 MS. EKL: Good morning, your Honor. Elizabeth Ekl,  
6 on behalf of the defendants.

7 THE COURT: I have the plaintiff's memorandum  
8 regarding Monell discovery. What was our plan here? Were we  
9 going to see what the issues were and then the defendant would  
10 want to respond or what?

11 MS. EKL: Judge, actually -- on prior court occasions  
12 I had specifically asked that counsel define exactly what  
13 their Monell claim was. You had asked them to come prepared  
14 to address that issue today.

15 THE COURT: After reading your memorandum, Mr.  
16 Gardiner, what I'm wondering is what kind of evidence you  
17 would hope to develop that would show that the city knew of  
18 these prior acts of misconduct by Guevara?

19 MR. GARDINER: Well, I think --

20 THE COURT: That, I take it, is your Monell inquiry.

21 MR. GARDINER: That's correct, Judge.

22 We would be seeking, of course, to have cases that  
23 were similar to this one, with the improper influencing of  
24 witnesses in connection with cases.

25 And it's our -- I think in our prior court appearance

1 there was discussion as to whether that would extend to acts  
2 of brutality or threats of violence and things like that. And  
3 we believe under the Solache case and the cases that we've  
4 cited, that it would extend to that; and that if their -- what  
5 we would be showing is a pattern of conduct by this officer  
6 that would place the City of Chicago on notice of his conduct  
7 in the past and establish a pattern under Monell.

8 And we have a circumstance here that I think is  
9 unique in some ways in that this officer has been the subject  
10 of some 40 cases in which his --

11 THE COURT: This is unusual. I don't think I've ever  
12 had one quite like this.

13 What does the city say about that?

14 MS. EKL: Well, Judge, the allegations in this case  
15 are very narrow. The officer in this case was alleged to have  
16 gone out and talked to witnesses and influenced them to go in  
17 and identify the defendant in this case.

18 His only contact with the defendant is that he  
19 brought the defendant to the station. He's not accused of  
20 interrogating, coercing, physically abusing the defendant in  
21 this case. It's merely -- he's accused of fabricating  
22 evidence -- or causing these witnesses to falsely identify  
23 Juan Johnson.

24 The plaintiffs are trying to bring in prior  
25 allegations of physical abuse against other individuals in

1 order to prove a Monell claim against Guevara in this case.

2 THE COURT: I think that there are prior instances of  
3 false accusations that the plaintiff is interested in. That  
4 sounds to me like it would be a relevant inquiry.

5 I don't know about the physical abuse. What  
6 relevance would that have?

7 MR. GARDINER: Well, it's the same sort of thing.  
8 It's still improper coercion.

9 THE COURT: No, I don't think so. It seems to me  
10 suborning perjury and using excessive force are different  
11 things.

12 MR. GARDINER: Judge, in the Solache case the Court  
13 dealt with exactly that issue and the Court said that the  
14 technical distinction between abuse, influenced versus  
15 physical, does not appear useful in determining whether  
16 allegations in question are relevant to establishing a pattern  
17 and practice.

18 And we think that here the physical abuse or threats  
19 of physical abuse are exactly what one of the witnesses has  
20 testified to in his deposition.

21 THE COURT: What do I tell the jury if all you have  
22 is prior instances of physical abuse of which the city was  
23 aware? That's all you have.

24 What do I tell the jury to do with that on the charge  
25 of city responsibility for false accusations? What is the

1 logical sequence of reasoning?

2 MR. GARDINER: To me, it's still improperly  
3 influencing witnesses, whether it's through physical coercion  
4 or through threats or through telling people what to do. It's  
5 all in the same grouping.

6 THE COURT: Well, maybe I misunderstand what the  
7 physical abuse is. I thought that these other instances  
8 involved physical abuse of the person charged with the  
9 offense.

10 You're saying that Guevara on previous occasions used  
11 physical abuse against witnesses to get them to testify  
12 against other people?

13 MR. GARDINER: Yes, I believe that we have that as  
14 well in some cases.

15 THE COURT: Well, I think that would be relevant.  
16 But I don't think that abusing defendants in other cases,  
17 physically abusing them, has a logical connection.

18 Now, on the other hand, if the Seventh Circuit says  
19 yes, what am I going to do?

20 MS. EKL: Judge, I would point out the Solache case  
21 they keep referring to is a state court case dealing with  
22 prior bad acts. It's not dealing with --

23 THE COURT: Oh, it's a state court case?

24 MS. EKL: Yes.

25 THE COURT: Well, then, I wouldn't hesitate to

1 disagree. And I do. But in fairness, I ought to read it,  
2 which I haven't done.

3 MR. GARDINER: Well, Judge, we've also cited the  
4 Newsome case, which is a Seventh Circuit case which deals with  
5 a similar issue, in which the Seventh Circuit recognized a  
6 free-standing due process claim where an individual police  
7 officer withholds exculpatory evidence.

8 And our view here would be that in the prosecution of  
9 Juan Johnson there was not disclosed --

10 THE COURT: I think there's a kinship there that  
11 would make that admissible. I think anything that goes to  
12 fabrication of evidence against a person, such as suborning  
13 perjury, suppressing evidence, is relevant. Abusing somebody  
14 physically is apples and oranges.

15 So I will order the city to produce Monell evidence  
16 tending to show that the Defendant Guevara on other occasions  
17 suppressed evidence favorable to arrested persons or procured  
18 false testimony implicating other persons in criminal  
19 offenses.

20 I will not order the production of anything having to  
21 do with physical abuse.

22 Now, if it's a matter of everything being all mixed  
23 up and there happens to be some physical abuse involved,  
24 there's no point in bending over backwards to eliminate the  
25 physical abuse.

1 MS. EKL: Judge, actually we've already tendered  
2 everything to counsel. That's kind of the problem. They have  
3 every allegation against Guevara, including allegations that  
4 he suborned -- or that he was insubordinate to his superior --

5 MR. GARDINER: Judge, that's not correct, if I may.

6 The city has produced OPS complaints in the second  
7 Juan Johnson trial, where Juan Johnson was acquitted. OPS  
8 complaints were produced that have not been produced, and we  
9 in the second case only were permitted --

10 THE COURT: Let me interrupt. Would what I just said  
11 cover what you want?

12 MR. GARDINER: I believe so.

13 THE COURT: All right.

14 MS. EKL: Judge, we do not have anything in our  
15 possession that hasn't been destroyed pursuant to a retention  
16 policy that hasn't been tendered to counsel. We have tendered  
17 every --

18 THE COURT: I'm going to enter the order anyway, and  
19 if you have already complied with it, there's no problem.

20 But discuss this. It sounds like something you need  
21 to discuss. I don't think I can get to the bottom of it  
22 today. You say you produced everything you have and they seem  
23 to think otherwise.

24 MS. EKL: I don't think it's really a matter of  
25 production. I think it's a matter of -- we're now going into



1 the phase of taking discovery, taking depositions, and they  
2 have listed a litany of witnesses, including every witness who  
3 was a victim in one of his CRs.

4 Our problem is that we are going to be litigating  
5 this case for years if I'm going to be taking discovery --

6 THE COURT: I'm not going to permit depositions of  
7 anybody who will testify only about physical abuse by Guevara.  
8 That's out.

9 MS. EKL: Okay. Thank you, Judge. That's what we  
10 were seeking.

11 THE COURT: Okay.

12 MR. GARDINER: Judge, if I may mention one thing just  
13 so that the Court is clear.

14 The Solache case that we're referring to, the subject  
15 police officer is -- the case that came down in December of  
16 '06 -- is Guevara.

17 THE COURT: I don't care.

18 MR. GARDINER: Okay.

19 THE COURT: That would be very relevant to a state  
20 court judge.

21 And I think counsel has a point here. I mean, if  
22 we're ever going to get this case in shape to try it, you have  
23 to --

24 MR. GARDINER: I understand, Judge. I think we can  
25 narrow it. It just, you know -- our hope is that the Court

1 would see that what we're really talking about here is  
2 improperly influencing witnesses. And, you know, one can say  
3 I'm going to frame you, one can say I'm going to beat you or  
4 one can beat the witness, and the --

5 THE COURT: I've already indicated that if there's  
6 any evidence that somebody was beaten to induce that person to  
7 testify falsely against another person, that's admissible.  
8 You can discover that. I can't make it any clearer. Okay?

9 Is there a pending motion?

10 MS. EKL: There is, Judge, a pending motion to  
11 dismiss the false arrest claim.

12 MR. GARDINER: That's not up today, Judge. That's  
13 briefed -- or there is a briefing schedule set.

14 THE COURT: I haven't looked at that.

15 MS. EKL: We're in the middle of the briefing  
16 schedule.

17 THE COURT: Oh, I see.

18 But as far as the Monell issue, was there a motion on  
19 that?

20 MS. EKL: No.

21 THE COURT: No. Okay.

22 All right. Well, I've told you what I thought.  
23 Remember it because I won't. Okay? All right.

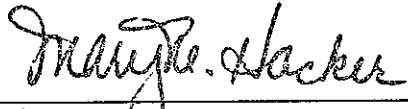
24 MS. EKL: Thank you, Judge.

25 MR. GARDINER: Thank you, your Honor.

1 (Which were all the proceedings had at the hearing of the  
2 within cause on the day and date hereof.)

3 CERTIFICATE

4 I HEREBY CERTIFY that the foregoing is a true,  
5 correct and complete transcript of the proceedings had at the  
6 hearing of the aforementioned cause on the day and date  
7 hereof.

8   
9 \_\_\_\_\_

10 Official Court Reporter  
11 U.S. District Court  
Northern District of Illinois  
Eastern Division

4-19-07  
Date